

FJH

263 NLRB No. 72

D--9133
Fairbury, IL

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LIMESTONE TRANSIT, INC.

and

Case 33--CA--5879

GENERAL CHAUFFEURS, SALES DRIVERS
AND HELPERS UNION, LOCAL NO. 179
AFFILIATED WITH THE INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge and amended charge filed on February 22 and April 1, 1982, respectively, by General Chauffeurs, Sales Drivers and Helpers Union, Local No. 179 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Limestone Transit, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 33, issued a complaint and notice of hearing on April 2, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing

263 NLRB No. 72

before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that commencing on or about December 14, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union by failing and refusing to process grievances filed on behalf of unit employees Daryl E. Ricketts and Ervin Van Winkle, although the Union has requested and is requesting it to do so. Respondent failed to file a timely answer to the complaint.

On May 10, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on May 17, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On May 28, 1982, Respondent filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 6 of the National Labor Relations Act provides that the Board "shall have authority . . . to make . . . in the manner prescribed by the Administrative Procedure Act, such rules

and regulations as may be necessary to carry out the provisions of this Act.'" Pursuant to this provision, the Board has promulgated rules regarding the filing of an answer to a complaint, including the requirement that such answer be filed within a definite period. Thus, Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that unless an answer is filed to the complaint "'within 10 days from the service thereof . . . all of the allegations in said Complaint shall be deemed to be admitted true and may be so found by the Board.'" According to the Motion for Summary Judgment, the Regional Office informed Respondent by letter dated April 26, 1982, that no answer had been filed and that unless Respondent filed an answer to the complaint by May 5, 1982, the General Counsel would move for summary judgment by the Board. Respondent did not file an answer until May 7, 1982.

In its response to the Notice To Show Cause, Respondent states that on February 19, 1981, it filed a bankruptcy petition in the United States District Court for the Central District of Illinois. It notes that the court subsequently denied the Union's

objections to the claim of the Small Business Administration for priority over pension and welfare contributions owed to the Union. Respondent contends that, by filing the instant charge, the Union was attempting "'to extort from the Respondent'" such payments for Ricketts and Van Winkle "'in violation of the order'" issued by the Federal Bankruptcy Court. On the merits, Respondent in effect denies the commission of any unfair labor practices because the Union never requested that the parties meet to resolve the grievances concerned herein.

As indicated above, the Regional Office advised Respondent that its answer was due and that the General Counsel would commence summary judgment proceedings if no answer were received by May 5, 1982. Despite receiving this extension of time in which to file an answer, Respondent failed to do so by the prescribed date. Respondent's response to the Notice To Show Cause does not deny that its answer was untimely, nor does it offer any explanation whatsoever for its failure to file a timely answer. Furthermore, Respondent does not contest service of the charge, complaint and notice of hearing, or the granting of the extension of time to file an answer. Therefore, since Respondent's answer was not received by the Regional Director before the close of business on May 5, 1982, we find that the answer was not timely filed.¹ We also conclude that the response to the Notice To Show Cause does not constitute good cause for Respondent's failure to file a timely answer within the meaning of Section 102.20 of the

¹ Livingston Powdered Metal, Inc., 253 NLRB 577 (1980).

Board's Rules and Regulations.² Therefore, in accordance with the rule set forth above, the allegations of the complaint are deemed to be admitted to be true, and are so found by the Board.

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

1. The Business of Respondent

Limestone Transit, Inc., an Illinois corporation, maintains its office and place of business in Fairbury, Illinois, where it is engaged in the interstate and intrastate transportation of freight and commodities. In the course and conduct of its business operations, Respondent annually purchases and receives at its Fairbury, Illinois, facility goods and materials valued in excess of \$50,000 directly from points located outside the State of Illinois. During the past 12 months, a representative period, Respondent performed services valued in excess of \$50,000 in connection with trips to and from sites located outside the State of Illinois for customers who meet the Board's jurisdictional standards other than indirect inflow of goods.

² See, e.g., World Services Corporation and/or Peggs Run Coal Company, 247 NLRB 1432 (1980); The Monroe Furniture Company, Inc., 231 NLRB 143 (1977); and O. R. Cooper and Son, 225 NLRB 1255 (1976).

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

General Chauffeurs, Sales Drivers and Helpers Union, Local No. 179 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Representative Status of the Union

1. All full-time and regular part-time truck drivers and mechanics employed by the Employer at its Fairbury, Illinois, facility; but excluding office clerical employees, professional employees, guards, and supervisors as defined by the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. At all times material herein, by virtue of the collective-bargaining agreement between Respondent and the Union, which by its terms was in effect from October 1, 1978, until October 1, 1981, the Union has been the recognized representative of Respondent's employees in the unit described above and, by virtue of Section 9(a) of the Act, is and has been the exclusive collective-bargaining representative of said employees for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment.

B. Respondent's Refusal To Bargain

Commencing on or about December 14, 1981, and continuing to date, Respondent has failed and refused and continues to fail and refuse to process grievances filed by the Union on behalf of employees Daryl E. Ricketts and Ervin Van Winkle. Accordingly, we find that Respondent, by the acts and conduct set forth herein, did refuse, and is refusing, to bargain collectively in good faith with the Union as the exclusive representative of the employees in the unit found appropriate, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the purposes and policies of the Act.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Limestone Transit, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. General Chauffeurs, Sales Drivers and Helpers Union, Local No. 179 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. All full-time and regular part-time truck drivers and mechanics employed by the Employer at its Fairbury, Illinois, facility; but excluding office clerical employees, professional employees, guards, and supervisors as defined by the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. At all times material herein, the above-named labor organization has been the exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.
5. By refusing on or about December 14, 1981, and at all times thereafter, to process the grievances filed by the Union on behalf of employees Daryl E. Ricketts and Ervin Van Winkle, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.
6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has

engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Limestone Transit, Inc., Fairbury, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to process grievances filed on behalf of employees Daryl E. Ricketts and Ervin Van Winkle by General Chauffeurs, Sales Drivers and Helpers Union, Local No. 179 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time truck drivers and mechanics employed by the Employer at its Fairbury, Illinois, facility; but excluding office clerical employees, professional employees, guards, and supervisors as defined by the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and process the grievances filed by the Union on behalf of employees Daryl E. Ricketts and Ervin Van Winkle.

(b) Post at its facility in Fairbury, Illinois, copies of the attached notice marked "'Appendix.'"³ Copies of said notice, on forms provided by the Regional Director for Region 33, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director for Region 33, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C.

August 19, 1982

John H. Fanning, Member

Howard Jenkins, Jr., Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to process grievances filed on behalf of employees Daryl E. Ricketts and Ervin Van Winkle by General Chauffeurs, Sales Drivers and Helpers Union, Local No. 179 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive bargaining representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and process the grievances filed by the above-named Union on behalf of employees Daryl E. Ricketts and Ervin Van Winkle. The bargaining unit is:

All full-time and regular part-time truck drivers and mechanics employed by the Employer at its Fairbury, Illinois, facility; but excluding office clerical employees, professional employees, guards, and supervisors as defined by the Act.

LIMESTONE TRANSIT, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Savings Center Tower, 16th Floor, 411 Hamilton Avenue, Peoria, Illinois 61602, Telephone 309--671--7081.